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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 7575 OF 2003

Shri Gaur Chandra Basu .. Petitioner
vs
Smt Ruchitra Ashok Sonde ... Respondent
..
Mr.P.K.Dhakephalkar for Petitioner
Mr.R.S.Apte for Respondent
..
CORAM D.G.KARNIK, J
DATE: 22ND JUNE, 2004.

P.C.

1. This writ petition is directed against an order dated 29th September, 2003 passed by the learned Civil Judge, Junior Division, Thane in execution proceedings No.104 of 2002 rejecting the judgment Debtor's application at Exhibit Nos. 16,19 and 23. Learned counsel for the plaintiff only challenged the order passed below application for appointment of Court Commissioner and did not challenge the common order passed on other two applications.

2. It was prayed in the application that an Architect or any other suitable person may be appointed as Court Commissioner with a direction to him to take legal inspection of the property and demarcate the suit premises. This court in Writ Petition No. 4457 of 1991 had passed a partial decree for possession directing that the petitioner who was the tenant of the entire flat should be allowed to retain the possession of one room on the northern side and decree for possession was confirmed regarding the remaining flat. The trial court held that there was no difficulty in identifying the northern room which the petitioner had been allowed to retain and therefore it is not necessary to appoint Court Commissioner. In view of this finding of fact, it is not necessary to appoint Court Commissioner to identify the northern room.

3. Learned counsel for the respondent decree holder submits that applications were made only with a view to delay the execution of the decree. There appears to be substance in the submission. Not only an application for appointment of Court Commissioner was made but,

several other aplications were made in the execution petition. A perusal of the applications copies of which were shown, indicate that the said applications were nothing but an attempt to delay the execution of the decree.

4. In the circumstances, petition is rejected.

5. Authenticated copy allowed.

D.G.KARNIK, J